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Supreme Court, U.S.
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No. 87-1708

In the Supreme Court of the United States

OCTOBER TERM, 1987

JAMES P. TIERNEY, et al.,
Appellants,

vs.

THE PLANNED INDUSTRIAL EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI, et al.,
Appellees.

JAMES P. TIERNEY, et al.,
Appellants,

vs.

THE HONORABLE H. MICHAEL COBURN,
Circuit Judge, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS OR AFFIRM

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May 17, 1988

QUESTIONS PRESENTED

1. Whether appellants' appeal was taken in conformity with the Rules of this Court.

2. Whether the issue presented on appeal was timely or properly raised by appellants or expressly passed on in the Missouri state courts.

3. Whether the Missouri Supreme Court decision below rests on adequate and independent state grounds.

4. Whether the issue presented on appeal presents a substantial federal question.

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JAMES P. TIERNEY, et al.,
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ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS OR AFFIRM

The undersigned appellees[1] in the above-entitled cases move to dismiss on the grounds that the appeal has not

1. Pursuant to Rule 28.1, appellee Economic Development Corporation of Kansas City, Missouri (formerly Kansas City Corporation for Industrial Development), a Missouri nonprofit corporation, states that it has no parent or subsidiary corporations, but that it is affiliated with the following entities: (1) KCCID-Charitable Fund; (2) EDC Loan Corporation; (3) Planned Industrial Expansion Authority of Kansas City, Missouri; (4) Land Clearance for Redevelopment Authority of Kansas City, Missouri; (5) Port Authority of Kansas City, Missouri; (6) Tax Increment Financing Commission; and (7) City of Kansas City, Missouri.

been taken in conformity with the Rules of this Court, that the federal question sought to be reviewed was not timely or properly raised or passed upon, and that the decision below rests on adequate and independent state grounds. Said appellees further move to dismiss or affirm on the ground that the question presented is so unsubstantial as not to need further argument.

STATE STATUTE INVOLVED

This appeal questions the validity of the application of one of Missouri's urban renewal laws, The Planned Industrial Expansion Law, 1967 Mo. Laws 172 (current version at Mo. Rev. Stat. §§ 100.300-.620 (1986)). This statutory system (the "PIEA Act") authorized the City of Kansas City, Missouri to create The Planned Industrial Expansion Authority of Kansas City, Missouri ("PIEA"), itself "a public body corporate and politic, exercising public and essential governmental functions," *id.* § 100.390, for clearance or redevelopment of "blighted, insanitary or undeveloped industrial areas" in the city. *Id.* § 100.320. The PIEA Act defines "blighted," "insanitary," "undeveloped industrial areas" with a long list of factors or criteria including, among others, "inadequate street layout," "obsolete platting," "vacant parcels of land not used economically," and "intermittent commercial and industrial structures in a primarily industrial or commercial area." *Id.* § 100.310(2), (11), (18). PIEA's clearance may be for or its redevelopment may consist of commercial or industrial uses. *Id.* § 100.310(9). Condemnation by PIEA is authorized upon completion of certain legislative actions, including the declaration by the governing body of the city that the subject area is a blighted,

insanitary, or undeveloped industrial area in need of development, *id.* § 100.400.1(2) (the "blight ordinance" step), and the approval by the governing body of the city of a general plan submitted by PIEA for redevelopment of the area, *id.* § 100.400.1(4) (the "plan ordinance" step).

The above cited sections of the PIEA Act are set forth in the accompanying appendix. (App. A72-A85).

ARGUMENT

This Appeal Was Not Taken In Conformity With The Rules Of This Court

Appellants have in several respects violated the Rules of this Court for the taking of an appeal.

First, appellants' Notice of Appeal (App. A65-A68) fails to specify the statute or statutes under which the appeal is taken, as required by Rule 10.2 of this Court.

Second, the notice does not identify the parties taking the appeal, in further violation of Rule 10.2.

Third, appellants failed to comply with the additional requirement of Rule 10.2 that proof of service in the manner prescribed by Rule 28 shall be filed with the Notice of Appeal. The Notice of Appeal was accompanied by neither a written acknowledgment of service, nor by a certificate of service signed by a member of the Bar of this Court,[2] nor by an affidavit of service in which the facts and circumstances of service are recited. Proof of service sufficient to satisfy Rule 28 thus was not provided.

Finally, even though appellants seek to challenge the constitutionality (as applied to appellants) of a statute of the State of Missouri, their Jurisdictional Statement fails to state that 28 U.S.C. § 2403(b) may be applicable, as required under Rule 28.4(c).

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2. The Court is respectfully requested to take judicial notice that the person signing appellants' incomplete certificate of service, Ms. Cynthia Weber Scherb, is not a member of the Bar of this Court.

Because it was not taken in conformity with the Rules of this Court, appellees respectfully submit that this appeal should be dismissed.

The Federal Question Sought To Be Reviewed Was Not Timely Or Properly Raised And Was Not Expressly Passed On

A Federal Constitutional claim cannot be considered by this Court unless it has been either timely and properly preserved in the state court or resolved by the state court. *Hill v. California*, 401 U.S. 797, 805 (1971). The issue presented by appellants was neither timely and properly raised by them below, nor ever passed on by the state courts.

At none of the earlier stages of these cases have appellants advanced the Federal Constitutional issue that they now seek to raise. In Missouri, constitutional issues must be raised at the earliest possible moment. *City of St. Louis v. Butler Co.*, 358 Mo. 1221, 1227, 219 S.W.2d 372, 376 (1949) (en banc). A state's limitations on raising Federal Constitutional rights must be respected. *Michel v. Louisiana*, 350 U.S. 91, 97 (1955). In their petition seeking a declaratory judgment, while alleging that the City Council determination of blight was arbitrary and capricious, appellants claimed only that the legislative action violated appellants' rights under the Missouri Constitution; nowhere do appellants present any claim arising under the Constitution of the United States. Petition for Declaratory Judgment, for Permanent Injunction, and for Damages for Tortious Conduct (filed Nov. 27, 1985).[3]

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3. Copies of appellants' pleadings and briefs filed below have been lodged with the Clerk of this Court.

Appellants likewise advanced no such argument in their written suggestions presented to the Trial Court with the declaratory judgment case. Suggestions in Opposition to Defendants' Motion to Dismiss Counts I, II and III (filed Jan. 21, 1986). Further, though permitted to do so in Missouri condemnation proceedings, appellants filed no answer raising constitutional issues in the parallel condemnation action. Moreover, no Federal Constitutional issue was raised during the lengthy four-day evidentiary trial held in the condemnation case on power to condemn issues, or in appellants' post-trial brief. Defendants' Trial Brief on the Issues Whether the City Council Acted Arbitrarily and Exceeded Its Power in Finding That the P.I.E. Plan is in Conformance with the General Plan for the Development of the City as a Whole (filed Mar. 4, 1986). Under the circumstances, it comes as no surprise that the Trial Court did not pass on, as appellants did not give the Trial Court the opportunity to pass on, the Federal Constitutional issue that appellants now seek to raise. (App. A7).

In short, the Federal Constitutional issue should not be considered as it was not raised at the first opportunity in either of the two Trial Court proceedings.

Even at the appellate stages of this litigation, appellants never timely and properly raised this Federal Constitutional issue. Missouri requires constitutional issues on appeal to be stated with specificity, including the constitutional provision by article and section number, in the briefing points and otherwise. *St. Louis Housing Auth. v. Barnes*, 375 S.W.2d 144, 147 (Mo. 1964); *Butler Co., supra.* Such rules are recognized by this Court, and appeals to this Court are dismissed if a Federal

Constitutional issue was not raised in the points below. *See Beck v. Washington,* 369 U.S. 541, 553 (1962). In their briefing on the writ in the Court of Appeals, appellants' sole reference to the United States Constitution related to an issue—the right to appellate review—that is wholly different from the question now being raised. Relators' Brief (filed Sept. 17, 1986) at 9-10. The Federal Constitutional issue now being advanced was never submitted to the Missouri Court of Appeals.

When the Court of Appeals issued a preliminary and permanent writ of prohibition, it did so on the ground only that the plan ordinance passed by the City Council did not meet the statutory requirements of the PIEA Act. (App. A69-A70). The subsequent decision of the Court of Appeals did not constitutionally invalidate the blight ordinance, nor did it discuss the validity, either constitutional or statutory, of a city council's considering expert evidence of economic underutilization, both of which appellants seek to place at issue here. (App. A8-A21).

After transfer to the Supreme Court of Missouri, in their briefing before the Supreme Court, appellants claimed that the PIEA Act as applied "violate[s] the Missouri Constitution." Relators' Brief on Transfer (filed Aug. 3, 1987) at 9. Again, no reference was made to the Federal Constitution, to any Federal Constitutional cases, or to due process.

The Missouri Supreme Court reversed the Court of Appeals and reinstated the Trial Court's order to condemn, finding that the plan ordinance sufficiently complied with the PIEA Act. (App. A28-A47). The Court ruled that evidence relating to economic underutilization may be a proper basis for condemnation under the PIEA

Act,[4] *id.* at A35-A36, stating that "the concept of urban redevelopment has gone far beyond 'slum clearance' and the concept of economic underutilization is a valid one." *Id.* at A36. The Court further stated:

> We need not repeat all of the evidence which was before the City Council tending to show that redevelopment of this area could promote a higher level of economic activity, increased employment, and greater services to the public. Industrial development is a proper public purpose. We do not sit as a court of appeal over the decisions of the Council. The burden is on the owners to show that the finding of blight constitutes an arbitrary or unreasonable abuse of a legislative authority. They have not made this showing.

Id. The state Supreme Court did not pass on any Federal Constitutional issue, nor, for that matter, did the dissent.

Appellants subsequently moved for rehearing before the state Supreme Court. In this motion for rehearing, appellants, belatedly, made a one-sentence, general reference to the United States Constitution:

> The holding of the Court, as applied to movants herein violates their rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

Motion for Rehearing (filed Dec. 29, 1987) at 6. Appellants did not explain how the holding violated the Fed-

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4. Contrary to appellants' gross misstatement in their Jurisdictional Statement that the state Supreme Court expressly held the evidence did not violate due process, Jurisdictional Statement at 1, 9, the state Supreme Court did not even mention due process.

eral Constitution, nor did they even make reference to any specific Federal Constitutional right. *Id.* at 1-6. Due process is still not mentioned, much less any claim of a constitutionally invalid application of any blight statute. The Missouri Supreme Court denied appellants' motion for rehearing, declining to pass on the scattergun Federal Constitutional claim that appellants had tardily advanced. (App. A63). Raising a Federal question for the first time in a petition for rehearing addressed to the highest state court is insufficient, particularly when the state court, as here, has not passed on the issue. *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945). The appeal should be dismissed.

The Decision Below Rests On Adequate And Independent State Grounds

Appellants erroneously state that the economic underutilization evidence was "the standard" which was in fact applied by the City Council in determining blight. In fact, as stated by the Missouri Supreme Court, the economic underutilization evidence was only part of a large amount of blight evidence presented to the City Council. (App. A35-A36). The term "economic underutilization" was actually a term of art used by an urban renewal expert (Mr. Ogburn) to summarize the bleak economic situation in the subject area. His summary term was based on his written factual findings relating to obsolete platting, an archaic street and alley pattern, a substantial amount of vacant land, decaying and dilapidated buildings, and other evidence. Moreover, in addition to the written findings in his study, the City Council heard the testimony of three urban renewal experts that the area was predominantly blighted, reviewed an earlier blight study

concerning the same area, and viewed color slides depicting the area.[5]

The standards applied by the City Council were those found in the PIEA Act itself, which provides that factors such as obsolete platting, dilapidated property, and outmoded street patterns may be considered by the City's governing body.[6] The validity of such factors as grounds

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5. Further, the City Council considered a 1978 blight study developed for yet another public authority finding the same area predominantly blighted using federal blight standards developed by the Department of Housing and Urban Development. Moreover, the expert head of the City Development Department testified at the legislative hearing that the City Development Department's own independent investigation and study of the subject area showed it was predominantly blighted. The City Council in adopting the blight ordinance considered all of the documents and studies in the file of the City Development Department. The Supreme Court accurately noted what the City Council was shown—that the subject area was in the oldest part of the city adjoining the downtown business district (App. A37) and that centrally located urban land is scarce. *Id.* at A36. Appellants presented no evidence whatever to the City Council.

6. Copies of the three sections of the PIEA Act defining blight were actually given to the City Council at the hearing and the City Council in the subject blight ordinance expressly referred to these three sections. The blight ordinance does not mention economic underutilization. Further, the study of Mr. Ogburn also contained written factual findings that parallel specific statutory blight factors found in the PIEA Act itself and that supported the conclusion of blight independent of any concern with economic underutilization. For example, the Ogburn study concluded that the following factors relevant to a blight determination under the PIEA Act were present:

> 1. A predominance of inadequate street patterns in the area, which required that 27 percent of total land area be used for right of way rather than productive, tax generating property. The PIEA standards include an "inadequate street layout," Mo. Rev. Stat. § 100.310(2), (18) (1986), and conditions representing "an inability to pay reasonable taxes," *id.* § 100.310(18).
>
> 2. A predominance of obsolete platting. The entire area was so platted. The PIEA Act standards include obsolete and inadequate platting. *Id.* § 100.310(2), (18).

(Continued on following page)

for condemning property have already been passed upon by this Court and approved.[7] *Berman v. Parker*, 348 U.S. 26, 30 (1954). Moreover, the validity of such factors have been passed upon and approved by the Missouri Supreme Court, and such precedent has not been challenged by appellants here. *Parking Sys., Inc. v. Kansas City Downtown Redevelopment Corp.*, 518 S.W.2d 11 (Mo. 1974). Even without the analysis of economic underutilization, sufficient evidence remains to support the legislative finding of blight.[8] The Missouri Supreme

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Footnote continued—

3. That 32.4 percent of total land area was used for surface parking, much of it unpaved and containing weeds and accumulated trash. The PIEA standards include "vacant parcels of land not used economically," and it may also be considered that such extensive parking contributes to "intermittent commercial and industrial structures in a primarily industrial or commercial area," or a commercial use which retards economic growth. *Id.* § 100.310(18).

4. That 14.5 percent of total land area was currently vacant or used for outside storage. The PIEA Act standards include "vacant parcels of land." *Id.*

5. That 8.4 percent of property in the area included deteriorated buildings containing, for example, broken retaining walls, boarded windows, and crumbling foundations. The PIEA Act standards include "old, decaying, obsolete buildings," *id.*, buildings suffering from "dilapidation, deterioration, age or obsolesence," *id.* § 100.310(11), and "deterioration of site improvements," *id.* § 100.310(2).

6. That 5.3 percent of the property in the area was used for underproductive economic purposes, including dilapidated residential areas and a massage parlor. The PIEA standards include "commercial uses amounting to conditions which retard economic . . . growth." *Id.* § 100.310(18).

7. Appellants do not here challenge the constitutional validity of the statutes themselves.

8. See notes 5 and 6, *supra*. Thus, independent sources of substantial evidence were present from which a reasonable legislator could find the subject area was predominantly blighted. The Missouri Supreme Court even noted that more than half of the subject land area was consumed with streets, alleys, and parking lots that the legislative authority might properly find to contribute to a condition of blight. (App. A35).

Court decision rests on adequate independent state grounds, and this appeal should be dismissed for that reason.

The Case Presents No Substantial Question Not Previously Decided By This Court

Even if the only evidence presented before the City Council had been the expert Mr. Ogburn's judgment of economic underutilization, appellants still would not have presented a substantial issue here on appeal. Legislative findings enjoy a strong presumption of constitutional validity. *New Orleans Pub. Serv., Inc. v. City of New Orleans,* 281 U.S. 682, 686 (1930). Standards applied by legislative bodies are not unconstitutionally vague simply because they might be applied arbitrarily. In assessing a claim of vagueness, standards are not applied in a vacuum, but rather applied to the case at hand. *United States v. Mazurie*, 419 U.S. 544, 550 (1975); *United States v. National Dairy Prods. Corp.*, 372 U.S. 29, 33 (1963). Appellants submit unrealistic hypotheticals suggesting that any property might arguably be put to a higher and better economic use, but the blighted area actually at issue here did not present any such speculative situation. The expert study by Mr. Ogburn found that the subject area was realizing only 25 percent of its full economic potential. In other words, the area was 75 percent economically underutilized. As stated by the Missouri Supreme Court, appellants must show that the legislative finding of blight was arbitrary (*i.e.*, that no reasonable legislator could have found the subject area was blighted) and appellants have not carried this heavy legal burden. (App. A36).

None of the cases presented by appellants in their Jurisdictional Statement are on point, further showing the lack of any substantial question. In fact, appellants

do not cite a single case striking down any statute, or any application of any statute, on grounds of vagueness. The case of *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), confirms the state's broad eminent domain powers by declaring that the transfer of private property from a group of private landowners to another group of private landowners may be a sufficient constitutional public use. *Id.* at 244. Nothing in the case deals with the quite different constitutional vagueness issue. Moreover, *Berman v. Parker*, 348 U.S. 26 (1954), cited by appellants in their Jurisdictional Statement, actually supports a concept of economic underutilization as being an appropriate standard to apply in an urban renewal situation. As stated in *Berman*:

> We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide the nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Id. at 33.

Urban renewal has long been accepted as a proper public use for the eminent domain power. Objecting

landowners must establish that the legislative findings supporting the need for urban renewal were arbitrary and capricious. The issue here is not a constitutional one, but an evidentiary one. There is no need for the United States Supreme Court to reexamine the evidentiary issue presented by appellants, which has already been reviewed three times in the Missouri state courts.

CONCLUSION

The undersigned appellees submit that the Court should dismiss this appeal, or, in the alternative, should affirm the Missouri Supreme Court decision below, for the reasons above stated.

Respectfully submitted,

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May 17, 1988

SUPPLEMENTARY APPENDIX

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, ex rel. JAMES P. TIERNEY, GEORGE E. TIERNEY, WILLIAM J. TIERNEY, and THOMAS F. TIERNEY, Relators,	)	
vs.	)	No. WD38633
THE HONORABLE H. MICHAEL COBURN, Circuit Judge, and CARL E. BOLTE, JR., ROBERT THANE JOHNSON, and KEITH P. BONDURANT, Commissioners, Respondents.	)	

PRELIMINARY RULE IN PROHIBITION

The State of Missouri to The Honorable H. Michael Coburn, Judge of the Circuit Court of Jackson County, Missouri:

WHEREAS, relators, James P. Tierney, George E. Tierney, William J. Tierney, and Thomas F. Tierney, have filed their Petition for Writ of Prohibition from which it appears that you are or may be exceeding your jurisdiction in ordering condemnation of relators' property and appointing commissioners to value the property in a certain cause now pending in the Circuit Court of Jackson County, Missouri, being Case No. CV-85-26543, in which relators are defendants and PIEA is plaintiff, it being alleged that the PIEA development plan did not include the elements required by §§ 100.400-1(4), 100.400-1(7), 100.400-1(9),

100.310(9), 100.310(14), and 100.310(15) (amended L. 1980 and L. 1982 RSMo.), and it being further alleged that the K-A Company's redevelopment plan or plans adopted by PIEA on December 8, 1982, substantially modified the PIEA's development plan approved by the City Council on September 28, 1982, and it being further alleged that this modification or modifications were not approved by the City Council as required by § 100.400-1(10) of the statute, and it being further alleged that because of said lack of statutory compliance, PIEA is without authority to condemn relators' property and that the circuit court is likewise without jurisdiction to do so in the cause asserted, it is therefore

ORDERED that this preliminary rule in prohibition be and the same is hereby issued out of and under the seal of this court directed to you, The Honorable H. Michael Coburn, Carl E. Bolte, Jr., The Honorable Keith P. Bondurant, and Robert Thane Johnson, to refrain from proceeding further in Case No. CV-85-26543 and that you give no further effect to the order of condemnation entered, nor act to file a report of commissioners nor take any other action to effectuate the provisions of the order of condemnation until further order of this court and that you show cause to this court on or before September 10, 1986, why this Preliminary Rule should not be made absolute and a final judgment in prohibition entered in this proceeding. The relators are allowed to make reply, or other pleading, to the respondent's return by September 17, 1986.

Dated this 26th day of August, 1986.

/s/ Jack P. Pritchard
Jack P. Pritchard, Acting
Presiding Judge Writ
Division

Shangler and Dixon, JJ. Concur.

CC: The Honorable H. Michael Coburn
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MISSOURI REVISED STATUTES (1986)

100.310. Definitions.—As used in this law, the following words and terms mean:

(1) **"Authority"**, a public body corporate and politic created by or pursuant to sections of this law or any other public body exercising the powers, rights and duties of such an authority;

(2) **"Blighted area"**, an area which, by reason of the predominance of defective or inadequate street layout, insanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition and use;

(3) **"Bond"**, any bonds, including refunding bonds, notes, interim certificates, debentures or other obligations issued by an authority pursuant to this law;

(4) **"City"**, all cities of this state now having or which hereafter have four hundred thousand inhabitants or more according to the last decennial census of the United States or any city that has adopted a home rule charter pursuant to section 19 of article VI of the Missouri Constitution;

(5) **"Clerk"**, the official custodian of records of the city;

(6) **"Federal government"**, the United States of America or any agency or instrumentality corporate or otherwise of the United States of America;

(7) **"Governing body"**, the city council, common council, board of aldermen or other legislative body charged with governing the municipality;

(8) **"Industrial developer"**, any person, partnership or public or private corporation or agency which enters or proposes to enter into an industrial development contract;

(9) **"Industrial development"**, the acquisition, clearance, grading, improving, preparing of land for industrial and commercial development and use and the construction, reconstruction, purchase, repair of industrial and commercial improvements, buildings, plants, additions, stores, shops, shopping centers, office buildings, hotels and motels and parking garages, multi-family housing facilities, warehouses, distribution centers, machines, fixtures, structures and other facilities relating to industrial and commercial use in blighted, insanitary or undeveloped industrial areas; and the existing merchants, residents, and present businesses shall have the first option to redevelop the area under this act*;

(10) **"Industrial development contract"**, a contract entered into between an authority and an industrial developer for the industrial development of an area in conformity with a plan;

(11) **"Insanitary area"**, an area in which there is a predominance of buildings and improvements which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population and

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*Words "this act" appear in original rolls. Intent probably was to refer to entire "Planned Industrial Expansion Law", §§ 100.300 to 100.620.

overcrowding of buildings, overcrowding of land, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime or constitutes an economic or social liability and is detrimental to the public health, safety, morals or welfare;

(12) **"Obligee"**, any bondholders, agents or trustees for any bondholders, lessor demising to the authority property used in connection with industrial clearance project, or any assignee or assignees of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority;

(13) **"Person"**, any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee or other similar representative thereof;

(14) **"Plan"**, a plan as it exists from time to time for the orderly carrying on of a project of industrial development;

(15) **"Project"**, any work or understaking:

(a) To acquire blighted, insanitary and undeveloped industrial areas or portions thereof including lands, structures or improvements the acquisition of which is necessary or incidental to the proper industrial development of the blighted, insanitary and undeveloped industrial areas or to prevent the spread or recurrence of conditions of blight, insanitary or undevelopment;

(b) To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct

or reconstruct streets, utilities and site improvements essential to the preparation of sites for uses in accordance with a plan;

(c) To construct, reconstruct, remodel, repair, improve, install improvements, buildings, plants, additions, stores, shops, shopping centers, office buildings, hotels and motels and parking garages, multi-family housing facilities, warehouses, distribution centers, machines, fixtures, structures and other facilities related to industrial and commercial uses;

(d) To sell, lease or otherwise make available land in such areas for industrial and commercial or related use or to retain such land for public use, in accordance with a plan;

(16) **"Public body"**, the state or any municipality, county, township, board, commission, authority, district or any other subdivision of the state;

(17) **"Real property"**, all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

(18) **"Undeveloped industrial area"**, any area which, by reason of defective and inadequate street layout or location of physical improvements, obsolescence and inadequate subdivision and platting contains vacant parcels of land not used economically; contains old, decaying, obsolete buildings, plants, stores, shops, shopping centers, office buildings, hotels and motels and parking garages, warehouses, distribution centers, structures; contains

buildings, plants, stores, shops, shopping centers, office buildings, hotels and motels and parking garages, multi-family housing facilities, warehouses, distribution centers and structures whose operation is not economically feasible; contains intermittent commercial and industrial structures in a primarily industrial or commercial area; or contains insufficient space for the expansion and efficient use of land for industrial plants and commercial uses amounting to conditions which retard economic or social growth, are economic waste and social liabilities and represent an inability to pay reasonable taxes to the detriment and injury of the public health, safety, morals and welfare.

100.320. Planned industrial expansion authority created, powers exercised, when.—There is hereby created in each city, as herein defined, a public body corporate and politic to be known as "The Planned Industrial Expansion Authority" of the city; provided, however:

(1) That such authority shall not transact any business or exercise its powers hereunder until and unless the governing body shall approve, by resolution or ordinance, the exercising in such city of the powers, functions and duties of an authority under this law;

(2) That the governing body of a city shall not adopt a resolution or ordinance pursuant to subdivision (1) above unless it finds:

(a) That one or more blighted, insanitary or undeveloped industrial areas exist in such community; and

(b) That the development of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such city.

. . . .

100.390. Authority to be a body corporate and politic, powers and duties of authority.—An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this law, including the following powers in addition to others granted:

(1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this law, to carry out the provisions of this law;

(2) To prepare or cause to be prepared plans for industrial development plans and to undertake and carry out industrial clearance projects for industrial development;

(3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a clearance project; and notwithstanding anything to the contrary contained in this law or any other provision of law, to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a clearance project, and to include in any contract let in connection with such a project provisions to fulfill

such of the conditions as it may deem reasonable and appropriate;

(4) Within its area of operation, to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, including fee simple absolute title, together with any improvements thereon, necessary or incidental to a project; to construct, reconstruct, remodel, repair, improve, install improvements, buildings, plants, additions, stores, shops, shopping centers, office buildings, hotels and motels and parking garages, multi-family housing facilities, warehouses, distribution centers, machines, fixtures, structures and other facilities related to industrial and commercial uses; to sell, lease, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with developers of property and with other public agencies containing covenants, restrictions and conditions regarding the use of such property for industrial and commercial and related purposes in accordance with the planned project and such other covenants, restrictions and conditions as the authority may deem necessary to prevent a recurrence of blighted, insanitary, undeveloped industrial areas or to effectuate the purposes of this law; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds and provide security for loans or bonds;

to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this law; provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by other public bodies shall restrict an authority or other public bodies exercising powers hereunder, in such functions, unless the legislature shall specifically so state;

(5) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be canceled;

(6) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, municipality or other public body or from any sources, public or private, for the purposes of this law, to give such security as may be required and to enter into and carry out contracts in connection therewith; an authority, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of this law;

(7) Within its area of operation, to make or have made all surveys, studies and plans necessary to the

carrying out of the purposes of this law and, in connection therewith, to enter into or upon any land, building or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers, but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building or improvement except for injuries resulting from wantonness or malice; and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of the surveys, appraisals, studies and plans;

(8) To prepare plans and provide reasonable assistance for the relocation of families displaced from an industrial or commercial clearance project area to the extent essential for acquiring possession of and clearing the area or parts thereof;

(9) To make such expenditures as may be necessary to carry out the purposes of this law; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(10) To delegate to a municipality or other public body any of the powers or functions of the authority with respect to the planning or undertaking of a project, and the municipality or public body is hereby authorized to carry out or perform such powers or functions for the authority;

(11) To loan the proceeds of the bonds or temporary notes hereinafter authorized to provide for the purchase, construction, extension, and improvement of a project

by an industrial developer pursuant to an industrial development contract approved by the authority in accordance with subdivision (2) of section 100.410;

(12) To exercise all powers or parts or combinations of powers necessary, convenient or appropriate to undertake and carry out plans and projects and all the powers herein granted.

100.400. Preparation and approval of plans, regulations governing.—1. Preparation and approval of plans shall be carried out within the following regulations:

(1) An authority shall not acquire real property for a project unless the governing body of the city has approved the plan, as prescribed in subdivision (9) of this section.

(2) An authority shall not prepare a plan for a project area unless the governing body of the city has declared, by resolution or ordinance, the area to be blighted, insanitary or undeveloped industrial area in need of industrial development.

(3) An authority shall not recommend a plan to the governing body of the city until a general plan for the development of the city has been prepared.

(4) The authority itself may prepare or cause to be prepared a plan or any person or agency, public or private, may submit such a plan to an authority. A plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, foster employment, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the project area, and shall include without being limited to:

(a) The boundaries of the project area, with a map showing the existing uses and condition of the real property therein;

(b) A land use plan showing proposed uses of the area;

(c) Information showing the standards of population densities, unemployment within area and adjacent areas, land coverage and building intensities in the area after completion of the plan;

(d) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

(e) A statement as to the kind and number of additional public facilities or utilities which will be required in the area after completion of the plan;

(f) A schedule indicating the estimated length of time needed for completion of each phase of the plan.

(5) Prior to recommending a plan to the governing body for approval, an authority shall submit the plan to the planning agency, if any, of the community in which the project area is located for review and recommendations as to its conformity with the general plan for the development of the city as a whole. The planning agency shall submit its written recommendations with respect to the proposed plan to the authority within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning agency, or, if no recommendations are received within the thirty days, then without the recommendations, an authority may recommend the plan to the governing body of the city for approval.

(6) Prior to recommending a plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the city and its environs which, in accordance with present and future needs, will promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, employment opportunities, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary areas, conditions of blight or deterioration or undeveloped industrial or commercial use.

(7) The recommendation of a plan by an authority to the governing body shall be accompanied by the recommendations, if any, of the planning commission concerning the plan: a statement of the proposed method and estimated cost of the acquisition and preparation for the project area and the estimated proceeds or revenues from its disposal to industrial developers; a statement of the proposed method of financing the project; a statement of a feasible method proposed for the relocation of families to be displaced from the project area;

and a schedule indicating the estimated length of time needed for completion of each phase of the plan.

(8) The governing body of the community may hold a public hearing on any plan or substantial modification thereof recommended by the authority, after public notice thereof by publication in a newspaper of general circulation in the community once each week for two consecutive weeks, the last publication to be at least ten days prior to the date set for hearing. The notice shall describe the time, date, place and purpose of the hearing and shall also generally identify the area to be covered by the plan. All interested parties shall be afforded at the public hearing a reasonable opportunity to express their views respecting the proposed plan.

(9) Following the hearing, the governing body may approve a plan if it finds that the plan is feasible and in conformity with the general plan for the development of the community as a whole. A plan which has not been approved by the governing body when recommended by the authority may be recommended again to it with any modifications deemed advisable.

(10) A plan may be modified at any time by the authority, or by the governing body; provided that, if modified after the lease or sale of real property in the project area, the modification must be consented to by the industrial developer of the real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the plan as previously approved by the governing body, the modification must similarly be approved by the governing body.

2. As an alternative to the procedures prescribed in subdivisions (2) and (5) of subsection 1, an authority may find an area to be a blighted or insanitary or undeveloped industrial area and in need of industrial or commercial development and may simultaneously prepare a plan and recommend to the governing body of the community the approval of such finding of* a blighted or insanitary or undeveloped industrial area and the approval of a plan, whether prepared by the authority or submitted to the authority, and the governing body may make its finding and approve the plan simultaneously. Simultaneously with such recommendation of a finding of a blighted or insanitary or undeveloped industrial area and recommendation of a plan to the governing body for approval, an authority shall submit the finding of a blighted or insanitary or undeveloped area and the plan to the planning agency, if any, of the community in which the project area is located for review and recommendation as to the conformity of the plan to the general plan for the development of the community as a whole. The planning agency shall submit its written recommendations with respect to the finding of a blighted or insanitary or undeveloped industrial area and the plan to the authority and the local governing body within thirty days after receipt of the findings and the plan for review. Upon receipt of the recommendations of the planning agency, or, if no recommendations are received within the thirty days, then without the recommendations, the governing body may approve the finding of a blighted or insanitary or undeveloped industrial area and may approve the plan in the manner prescribed in subdivisions (8) and (9) of subsection 1.

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*Word "or" appears in original rolls.